

ADVISORY OPINION 93-031

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

January 14, 1994

Ms. Elaine Faithful, Campaign Manager
for Mayor Pam Miller
200 East Main Street
Lexington, Kentucky 40507

Dear Ms. Faithful:

Thank you for contacting the Registry. Also, thank you for supplying additional information to me during our phone conversation on Thursday, December 16, 1993.

Based on all the information you have provided, the facts of your request can be stated as follows:

You are campaign manager for Mayor Pam Miller's 1993 General election campaign for Mayor of the Lexington-Fayette County Urban Government. The questions you have tendered are based on Mayor Miller filing with the Registry of Election Finance as a future year candidate for her 1998 re-election campaign.

Based on the facts above, and the Advisory Opinion request you have tendered, your questions (which are quoted from your letter) are as follows:

1. Mayor Miller is considering making charitable contributions with some of [the 1993 mayoral candidacy] remaining funds. Must these contributions be made on a one time basis or can she donate some of those funds now and more later?
2. Mayor Miller has asked a local woman to maintain her database. We would like to purchase a computer and software for this purpose. Is such a purchase permissible and will we be allowed to pay for this woman's services during the interim?
3. Since there are five years before the next mayoral election, Mayor Miller would like to communicate with her supporters periodically with a newsletter. Would such expenditures be permissible?
4. In preparation for the next election, Mayor Miller would like to develop a video archive of various news stories during the interim. To that end, is it permissible for us to purchase a TV and VCR?
5. Mayor Miller is prepared to sign a letter expressing her intention to run for re-election in five years. However, should for any reason she decide later against doing so, what would be the repercussions of such a decision. We ask this question simply because Mayor Miller will be 60 years old in 1998, and she will have to make the personal determination at that time if she will be able to approach another four years as mayor with the full vigor that she enjoys now.

6. Finally, if we were to make the above purchases before the 60 day post election finance report is made, can they be considered as part of the 1993 election?

Several of the six (6) questions that you have asked are based on the premise that Mayor Pam Miller, Mayor of the Lexington-Fayette County-Urban Government, will run for reelection in the 1998 Primary and General elections. On Thursday, December 9, 1993, the Registry of Election Finance promulgated and approved a regulation concerning campaign expenditures. Please find enclosed a copy of that regulation, 32 KAR 2:200 Allowable campaign expenditures. The Registry expects that this regulation will go before the Administrative Regulation Review Subcommittee for approval in February, 1994. Until that time, the proposed regulation, 32 KAR 2:200, reflects the interpretation the Registry would use to give answer to questions involving allowable campaign expenditures.

Your question number one asks if Mayor Miller may make charitable contributions from the funds remaining in her 1993 General Election Campaign Fund. The answer to that question is no, unless Mayor Miller plans to close her account completely, she may not make partial contributions to charities from the funds remaining in her account. KRS 121.180(10) speaks to a situation of a final dispensation of surplus funds in a campaign. In your case, Mayor Miller plans to run for reelection, using the surplus funds left in her account.

Section 1(h) of the enclosed regulation speaks to the question of whether or not a Mayor Miller may purchase computer equipment. According to that section, "such purchase or rental shall be presumed to be primarily and directly related to the individual's candidacy if the purchase or rental occurs during the year in which the individual will appear on the ballot or seeks election as a write-in candidate." Id. Based on this rule, the purchase you propose would be permitted only if the computer were used, for at least 50% of its total use, towards 1998 reelection campaign related activities. Id. The burden of proof to demonstrate the 50% use was primarily campaign related activities would be on the candidate, and expenditures such as this would be subject to strict scrutiny by Registry auditors and other staff. Also, data compiled with the computer purchased for the 1998 mayoral campaign could not be used as data for another campaign, unless the other campaign paid the mayoral campaign fair market value for the information. The same analysis applies to salary for the computer operator.

Section 2(b) of 32 KAR 2:200 (proposed regulation) prohibits "{e}xpenditures made to defray the cost associated with an individual's performance of his official duties as an office holder{.}" Id. The question raised by your question 3 is whether or not a newsletter over the four year period before the 1998 election year would constitute a report of Mayor Miller's official duties or a report of May Miller's campaign activities with a view toward seeking the nomination and winning the office of Mayor of the Lexington-Fayette County-Urban County Government in the 1998 election. Again, the burden of proof would be on the campaign in question to prove that the newsletter was not a report of Mayor Miller's official activities as Mayor. The closer in time to the 1998 election the campaign produced such a newsletter would make a difference as to whether or not the letter was viewed as campaign material or as a report of office holder's activities.

The answer to your fourth question is exactly the same as the answer to your second question. That is, the burden of proof for permissible activity and expenditures in regard to a TV and VCR would be placed on the campaign in question. The same 50% rule would apply, and the 50% rule requires the campaign be remunerated at fair market value rates for any non-campaign related use of the TV and VCR equipment. Campaign, in this instance, means Mayor Miller's 1998 re-election campaign for Mayor of Lexington-Fayette Urban County Government. The answer to your question 5 lies within the other answers provided in this advisory opinion. Depending on how Mayor Miller's reelection campaign spends its money, the campaign might have to be reimbursed for expenditures that are not directly and primarily related to Mayor Miller's 1998 campaign for reelection to the Lexington-Fayette County-Urban Government.

The answer to your last question (number 6) is no. Because your questions are premised on Mayor Miller's declaring as a future year candidate for the 1998 reelection, these expenditures could not be considered part of her 1993 campaign.

Should the Administrative Regulation Review Subcommittee substantially change the enclosed regulation, the answers to these questions could change. In that event, you might wish to resubmit your questions. Also, if the above subcommittee tightened the restrictions outlined in the regulation, this opinion would not provide protection from violations outlined in the regulation and altered by the subcommittee if those violations were actions taken after the subcommittee officially approved or changed the regulation. In other words, Mayor Miller's 1998 re-election campaign would be bound by 32 KAR 2:200 as altered by the subcommittee. Thus, the May Pam Miller 1998 re-election committee would receive complete protection for the activities described by this opinion from its date of issuance until the regulation subcommittee makes material (more strict) changes in 32 KAR 2:200.

This opinion is based upon the course of action outlined in your letter. If you should have any more questions, please give us a call. Thank you.

Sincerely,

Timothy E. Shull
General Counsel

TES/dt